

GEORGE H. ANDREWS

IBLA 81-570

Decided August 27, 1981

Appeal from the decision of the California State Office, Bureau of Land Management, declaring certain mining claims abandoned and void. CA MC 50751 through CA MC 50773.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

2. Mining Claims: Assessment Work

Evidence of assessment work must be delivered to and received by the proper Bureau of Land Management office by the due date in order to be timely filed. Depositing a document in the mails does not constitute filing.

APPEARANCES: George H. Andrews, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

George H. Andrews has appealed from the March 25, 1981, decision of the California State Office, Bureau of Land Management (BLM), declaring

mining claims CA MC 50751 through CA MC 50773 <sup>1/</sup> abandoned and void for failure to file timely evidence of assessment work for the claims by December 30, 1980. Evidence of assessment work or notice of intention to hold the claims for calendar year 1980, was due in the BLM office on or before December 30, 1980. These notices were received January 2, 1981.

Appellant asserts his belief that a document is filed when postmarked and that he sent the required papers by certified mail on December 29. He stresses that the claims have been held and labored upon by his family since the 1920's, and requests that his claims be reinstated.

[1] Section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (1976), requires the owner of an unpatented mining claim located prior to October 21, 1976, to file evidence of assessment work for the claim with BLM within the 3-year period following that date and prior to December 31 of each year thereafter. The corresponding Departmental regulation 43 CFR 3833.2-1(a) reads:

(a) The owner of an unpatented mining claim located on Federal lands on or before October 21, 1976, shall file in the proper BLM office on or before October 22, 1979, or on or before December 30 of each calendar year following the calendar year of such recording, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim. [Emphasis added.]

Failure so to file is considered conclusively to constitute abandonment of a claim under section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4.

The Board has repeatedly held that a mining claimant, having chosen the means of delivery, must accept the responsibility and bear the consequences of loss in transmission or untimely delivery of his filings. Doris McFall, 55 IBLA 110 (1981); Everett Yount, 46 IBLA 74 (1980); James E. Yates, 42 IBLA 391 (1979); Amanda Mining & Manufacturing Association, 42 IBLA 144 (1979). Despite appellant's belief that a document is filed when postmarked, BLM's regulations reflect its longstanding practice that filing is accomplished only when a document is delivered to and received by the proper office, and that depositing a document in the mails does not constitute filing. 43 CFR 1821.2-2(d) and (f); Doris McFall, *supra*; Glenn D. Graham, 55 IBLA 39 (1981). Persons dealing with the Government are presumed to have knowledge of such duly promulgated regulations. Federal Crop Insurance Corporation v. Merrill, 332 U.S. 380 (1947); Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

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<sup>1/</sup> The claims, all situated in San Luis Obispo County, were located prior to the enactment of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1701 (1976), and were recorded on Oct. 18, 1979. Their names, serial numbers, and dates of location are set forth in the Appendix.

In the absence of evidence that BLM did timely receive evidence of assessment work performed on appellant's claims, BLM properly declared the claims abandoned and void. Gary L. Barton, 47 IBLA 386 (1980). Even in cases of severe hardship this Board has no authority to excuse lack of compliance with the statute, or to reinstate claims or afford relief from statutory consequences for failure to make timely filings. Lyman Mining Co., 54 IBLA 165 (1981); Lynn Keith, *supra*.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis  
Administrative Judge

We concur:

Edward W. Stuebing  
Administrative Judge

C. Randall Grant, Jr.  
Administrative Judge

## APPENDIX

<u>Name of Claim</u>		<u>Serial Number</u>	<u>Date of Location</u>
Mercury Bell Lode	CA MC 50751	11/7/64	
Janet Lode	CA MC 50752	11/7/64	
Annette Lode		CA MC 50753	11/7/64
Theresa Lode	CA MC 50754	11/7/64	
Leone Lode	CA MC 50755	11/7/64	
Alpha Mabel Lode	CA MC 50756	1/5/65	
#1 Quicksilver Quartz	CA MC 50757	1/2/13	
#2 Quicksilver Quartz	CA MC 50758	1/2/13	
#3 Quicksilver Lode	CA MC 50759	8/2/15	
#4 Quicksilver Lode	CA MC 50760	8/2/15	
C M C #5 Lode	CA MC 50761	5/27/30	
Pedraita O Lode	CA MC 50762	5/27/30	
Dowsing #1 Lode	CA MC 50763	5/22/30	
Dowsing #2 Lode	CA MC 50764	5/22/30	
Dowsing #3 Quartz	CA MC 50765	5/22/30	
Bell Quicksilver #1 Quartz	CA MC 50766	1/9/34	
Bell #2 Quicksilver Quartz	CA MC 50767	1/30/34	
Bell Quicksilver #3 Quartz	CA MC 50768	1/30/34	
Bell Quicksilver #4 Quartz	CA MC 50769	1/30/34	
Bell View Quicksilver #5 Quartz	CA MC 50770	1/9/34	
Bell View Quicksilver Quartz	CA MC 50771	4/9/34	
Piedmont Q Quartz	CA MC 50772	4/9/34	
Bellmounde Quartz	CA MC 50773	4/9/34	

